

October 23, 2015

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Amex Plating, Inc.
Attn: Sylvia D. Rodriguez, President
3333 Woodward Ave.
Santa Clara, CA 95054

Rodriguez Family Trust
Halupka-Rodriguez Family Trust
Attn: Sylvia D. Rodriguez
3333 Woodward Ave.
Santa Clara, CA 95054

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Ms. Rodriguez:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against Amex Plating, Inc. ("Amex") and the Rodriguez Family Trust and Halupka-Rodriguez Family Trust ("Property Owners") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Amex's facility, located at 3333 Woodward Ave., Santa Clara, California (the "Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has over three thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by Amex's operations.

This letter addresses Amex's unlawful discharge of pollutants from the Facility via stormwater into the Guadalupe River and San Francisco Bay. Specifically, Baykeeper's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Stormwater Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order



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No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "Industrial Stormwater Permit").¹

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Amex of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against Amex and the Property Owners under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Amex contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

Amex's Facility is located at 3333 Woodward Avenue in Santa Clara, California. At the Facility, Amex conducts electroplating processes. Potential pollutants from the Facility include total suspended solids ("TSS"), acids, debris, solvents, and nitrates + nitrites. Stormwater from the Facility discharges, via the Santa Clara storm sewer system to the Guadalupe River and then to San Francisco Bay. The real property where the Facility is located is owned by the Property Owners.

B. The Affected Waters

The Guadalupe River is a water of the United States. It is the predominant drainage in the western portions of San Jose and is an important ecological resource in the Santa Clara Valley. The Guadalupe River provides habitat for anadromous fish such as steelhead, as well as resident fish and other aquatic species. The Guadalupe River also provides important habitat for numerous riparian species of plants and animals.

San Francisco Bay is a water of the United States. The Bay is an ecologically-sensitive waterbody and a defining feature of Northern California. San Francisco Bay is

¹ On April 1, 2014, the State Water Resources Control Board adopted the 2015 Permit. As of July 1, 2015, the 2015 Permit superseded the 1997 Permit except for the purpose of enforcing against violations of the 1997 Permit. 2015 Permit, Section I.A. (Finding 6).

an important and heavily-used resource, with special aesthetic and recreational significance for people living in the surrounding communities. However, the Bay's water quality is impaired and continues to decline. The Bay's once-abundant and varied fisheries have been drastically diminished by pollution, and much of the wildlife habitat of the Bay has been degraded.

The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes habitat for threatened and endangered species.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay and its tributaries, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

On or around July 1, 1994, Amex submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the 1997 Permit. On or around February 7, 2015, Amex submitted an NOI to be authorized to discharge stormwater from the Facility under the 2015 Permit. Information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants² and best conventional pollutant control technology ("BCT") for conventional pollutants.³ 1997 Permit, Order Part B.3.; 2015 Permit, Section X.H. EPA has published Benchmark values set at the maximum pollutant concentration present if an

² BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

industrial facility is employing BAT and BCT, as listed in Attachment I to this letter.⁴ The 2015 Permit incorporates these Benchmark values as “Numeric Action Levels.” 2015 Permit, Section I.M. (Finding 62).

Amex’s self-reported exceedances of Benchmark values in the last five years, identified in Attachment 2 to this letter, indicate that Amex has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit. Baykeeper alleges and notifies Amex that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for aluminum, nitrate plus nitrite (N+N), pH, zinc, and iron.

Amex’s ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that Amex has not developed and implemented sufficient Best Management Practices (“BMPs”) at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, installing filters in downspouts and storm drains, and other similar measures.

Amex’s failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Amex discharges stormwater without meeting BAT/BCT. Baykeeper alleges that Amex has discharged stormwater containing excessive levels of pollutants from the Facility to the Guadalupe River and San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five years. Attachment 3 compiles all dates in the last five years when a significant rain event occurred. Amex is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA in the last five years.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit’s Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* 1997 Permit, Order Part A.2.; 2015 Permit, Sections III.C., VI.C. The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. 1997 Permit, Order Part C.1.; 2015 Permit, Section VI.B. Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards (“WQS”). 1997 Permit, Order Part C.2.; 2015 Permit, Section

⁴ The Benchmark values are part of EPA’s Multi-Sector General Permit (“MSGP”) and can be found at: <http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm>. The most recent sector-specific Benchmarks are available at: http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_part8.pdf (“2015 MSGP”). SIC Code 3471 is covered under Sector AA in the 2015 MSGP.

VI.A. Applicable WQS are set forth in the California Toxics Rule (“CTR”)⁵ and Chapter 3 of the San Francisco Bay Basin (Region 2) Water Quality Control Plan (“Basin Plan”).⁶ See Attachment 1. Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. The Basin Plan, Table 3-3, identifies specific marine water quality objectives for toxic pollutants.⁷

Baykeeper alleges that Amex’s stormwater discharges have caused or contributed to exceedances of the Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on Amex’s self-reported data submitted to the San Francisco Bay Regional Water Quality Control Board. The sampling results indicate that Amex’s discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impact human health or the environment; and violate applicable WQS. For example, Amex’s sampling results indicate exceedances of numeric WQS for pH and zinc. See Attachment 2.

Baykeeper alleges that each day that Amex has discharged stormwater from the Facility, Amex’s stormwater has contained levels of pollutants that exceeded one or more

⁵ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31,682 (May 18, 2000).

⁶ The Basin Plan is published by the San Francisco Bay Regional Water Quality Control Board at: http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan.

⁷ Basin Plan, Table 3-3 is available at: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-03.pdf.

of the Receiving Water Limitations and/or applicable WQS in San Francisco Bay and its tributaries. Baykeeper alleges that Amex has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to the Guadalupe River and San Francisco Bay during at least every significant local rain event over 0.1 inches for the last five years. *See* Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation or causes or contributes to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA. Amex is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA for the last five years.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan (“SWPPP”). 1997 Permit, Section A.1.a. and Order Part E.2.; 2015 Permit, Sections I.I. (Finding 54), X.B. The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. 1997 Permit, Order Part E.2.; 2015 Permit, Section X.B.

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, and specifications of BMPs designed to reduce pollutant discharge to BAT and BCT levels. 1997 Permit, Sections A.1.-A.10.; 2015 Permit, Section X. Moreover, the Industrial Stormwater Permit requires dischargers to evaluate and revise SWPPPs to ensure they meet these minimum requirements, in particular that the necessary BMPs are in place and being implemented. *See* 1997 Permit, Section A.9. (requiring a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP implemented within 90 days after the evaluation); 2015 Permit, Section X.D.2.a. (obligating the discharger to “ensure its SWPPP is developed, implemented and revised as necessary to be consistent with any applicable municipal, state, and federal requirements that pertain to the requirements in [the 2015 Permit].”).

Based on information available to Baykeeper, Amex has failed to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP to satisfy each of the requirements of the Industrial Stormwater Permit. For example, Amex’s past or current SWPPP has not/does not include and Amex has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

Moreover, Amex’s latest SWPPP, revised in June 2015 (“Amex SWPPP”), does not meet the requirements of the 2015 Permit because it fails to describe how the BMPs will be implemented, the locations where the BMPs shall be implemented, and the procedures for implementing the BMPs. *See* 2015 Permit, Section X.H.1., note 12 (requiring “Dischargers to select, design, install and implement” BMPs that meet the

minimum Good Housekeeping BMPs described) and Section X.H.4. (requiring that the SWPPP specifically describe the procedure for each BMP). For instance, the Amex SWPPP states that “Good housekeeping practices can reduce spills and waste” (Amex SWPPP at p. 26), yet fails to describe any specific practices that Amex is instituting at the Facility that would be categorized as “Good Housekeeping Practices.”⁸

Accordingly, Amex has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of the Industrial Stormwater Permit, and Amex will continue to be in violation every day until it develops and implements an adequate SWPPP. Amex is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five years.

D. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. Amex sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit “must be either eliminated or permitted by a separate NPDES permit.” 1997 Permit, Order Part A.1.; 2015 Permit, Sections I.A. (Finding 8) and I.C. (Finding 28). Because Amex has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS

Amex Plating, Inc., the Rodriguez Family Trust, and the Halupka-Rodriguez Family Trust are the persons responsible for the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

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⁸ In addition, the Amex SWPPP is inadequate because it fails to include the Facility’s hours of operation, which is specifically required by the 2015 Permit. 2015 Permit, Sections X.D.2.d.

VI. COUNSEL

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Erica A. Maharg, Staff Attorney
George Torgun, Managing Attorney
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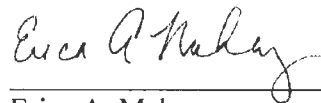
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VII. REMEDIES

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Amex for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Amex in this action. The CWA imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper is willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me or George Torgun to initiate these discussions.

Sincerely,



Erica A. Maharg
Staff Attorney
San Francisco Baykeeper

Cc:

Gina McCarthy, Administrator
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State Water Resources Control Board
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Attachment 1: EPA Benchmarks and Water Quality Standards for Discharges to Freshwater

A. EPA Benchmarks, 2000 and 2015 Multi-Sector General Permit (“MSGP”)

| Parameter | Units | Benchmark value | Source |
|-------------------------------|--------------|------------------------|---------------|
| pH | SU | 6.0 – 9.0 | 2000 MSGP |
| Total Suspended Solids | mg/L | 100 | 2000 MSGP |
| Oil and Grease | mg/L | 15 | 2000 MSGP |
| Aluminum Total | mg/L | 0.75 | 2015 MSGP |
| Iron Total | mg/L | 1.0 | 2015 MSGP |
| Zinc Total | mg/L | 0.13 | 2015 MSGP* |
| Nitrate plus Nitrite Nitrogen | mg/L | 0.68 | 2015 MSGP |

* Assuming a water hardness range of 100-125 mg/L

B. Water Quality Standards (Basin Plan, Tables 3-3, 3-3A)

| Parameter | Units | WQS value | Source |
|------------------|--------------|------------------|---------------|
| pH | SU | 6.5 – 8.5 | Basin Plan |
| Zinc | mg/L | 0.12 | Basin Plan |

Attachment 2: Table of Exceedances for Amex Plating, Inc.

Table containing each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of Basin Plan Water Quality Standards. The EPA Benchmarks and Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

| Rpt Period | Sample Date | Sample Point | Parameter | Result | Unit |
|------------|-------------|--------------|-----------|--------|------|
| 2012-2013 | 11/16/2012 | Dock Area | N+N | 0.76 | mg/L |
| 2012-2013 | 11/16/2012 | Dock Area | pH | 5.7 | SU |
| 2012-2013 | 11/16/2012 | Dock Area | Zn | 0.43 | mg/L |
| 2012-2013 | 11/16/2012 | Parking Lot | Al | 1.13 | mg/L |
| 2012-2013 | 11/16/2012 | Parking Lot | Fe | 2 | mg/L |
| 2012-2013 | 11/16/2012 | Parking Lot | N+N | 0.91 | mg/L |
| 2012-2013 | 11/16/2012 | Parking Lot | pH | 5.7 | SU |
| 2012-2013 | 11/16/2012 | Parking Lot | Zn | 0.77 | mg/L |
| 2014-2015 | 10/20/2014 | Dock Area | Al | 1.3 | mg/L |
| 2014-2015 | 10/20/2014 | Dock Area | Fe | 2.16 | mg/L |
| 2014-2015 | 10/20/2014 | Dock Area | N+N | 5.7 | mg/L |
| 2014-2015 | 10/20/2014 | Dock Area | TSS | 116 | mg/L |
| 2014-2015 | 10/20/2014 | Dock Area | Zn | 2.99 | mg/L |
| 2014-2015 | 10/20/2014 | Dock Area | pH | 6.3 | SU |
| 2014-2015 | 10/20/2014 | Parking Lot | Al | 3.86 | mg/L |
| 2014-2015 | 10/20/2014 | Parking Lot | Fe | 6.76 | mg/L |
| 2014-2015 | 10/20/2014 | Parking Lot | N+N | 5.4 | mg/L |
| 2014-2015 | 10/20/2014 | Parking Lot | TSS | 229 | mg/L |
| 2014-2015 | 10/20/2014 | Parking Lot | Zn | 3.49 | mg/L |
| 2014-2015 | 10/20/2014 | Parking Lot | pH | 6.3 | SU |

October 24, 2010 to October 23, 2015

likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

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